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Supreme Court of the United States

JAMES OBERGEFELL, et al., AND BRITTANI HENRY, et al., *Petitioners*
v.
RICHARD HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH, et al., *Respondents.*

VALERIA TANCO, et al. *Petitioners*
v.
WILLIAM "BILL" HASLAM, GOVERNOR OF TENNESSEE, et al., *Respondents.*

APRIL DEBOER, et al., *Petitioners*
v.
RICK SNYDER, GOVERNOR OF MICHIGAN, et al., *Respondents.*

GREGORY BOURKE, et al., AND TIMOTHY LOVE, et al., *Petitioners*
v.
STEVE BESHEAR, GOVERNOR OF KENTUCKY, et al., *Respondents.*

On Writs of Certiorari to the United States Court of Appeals for the Sixth Circuit

Brief of the American Psychological Association, Kentucky Psychological Association, Ohio Psychological Association, American Psychiatric Association, American Academy of Pediatrics, American Association for Marriage and Family Therapy, Michigan Association for Marriage and Family Therapy, National Association of Social Workers, National Association of Social Workers Tennessee Chapter, National Association of Social Workers Michigan Chapter, National Association of Social Workers Kentucky Chapter, National Association of Social Workers Ohio Chapter, American Psychoanalytic Association, American Academy of Family Physicians, and American Medical Association as *Amici Curiae* in Support of Petitioners

Nathalie F.P. Gilfoyle
AMERICAN PSYCHOLOGICAL ASSOCIATION
750 First Street NE
Washington, DC 20002

Paul M. Smith
Counsel of Record
JENNER & BLOCK LLP
1099 New York Ave. NW
Suite 900
Washington, DC 20001
(202) 639-6000
Psmith@jenner.com

Aaron M. Panner
KELLOGG HUBER HANSEN TODD EVANS & FIGEL PLLC
1615 M St. NW
Suite 400
Washington, DC 20036

Counsel for Amici Curiae

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INTEREST OF *AMICI CURIAE*[1]

Amici are leading associations of psychologists, physicians, and mental health professionals.

The American Psychological Association ("APA") is a scientific and educational organization dedicated to increasing and disseminating psychological knowledge; it is the world's largest professional association of psychologists. The APA has adopted multiple research-based policy statements supporting the rights of gay and lesbian people, including a 2011 policy statement supporting full marriage equality for same-sex couples.[2] The Kentucky Psychological Association and the Ohio Psychological Association are state affiliates of the APA.

The American Psychiatric Association is the Nation's largest organization of physicians specializing in psychiatry. It joins this brief for the reasons expressed in its 2005 position statement: "In the interest of maintaining and promoting mental health, the American Psychiatric Association supports the legal recognition of same-sex marriage with all rights,

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[1] No party's counsel authored this brief in whole or in part, and no person other than *Amici* contributed money that was intended to fund preparing or submitting this brief.

[2] APA, *Resolution on Marriage Equality For Same-Sex Couples* (2011) (denial of marriage equality "perpetuates the stigma historically attached to homosexuality, and reinforces prejudice against lesbian, gay, and bisexual people").

benefits, and responsibilities conferred by civil marriage."[3]

The American Academy of Pediatrics ("AAP") is the largest professional association of pediatricians in the world. Through education, research, advocacy, and the provision of expert advice, AAP seeks the optimal physical, mental, and social health and well-being for infants, children, adolescents, and young adults. The AAP supports marriage equality for all capable and consenting couples, including those who are of the same gender, to guarantee all legal rights and benefits for their children.[4]

The American Association for Marriage and Family Therapy ("AAMFT"), founded in 1942, is a national professional association representing the field of marriage and family therapy and the professional interests of over 50,000 marriage and family therapists in the United States. The Michigan Association for Marriage and Family Therapy is the Michigan division of the AAMFT. Both organizations join this brief for the reasons expressed in the AAMFT's 2005 *Position on Couples and Families*.[5]

The National Association of Social Workers ("NASW") is the largest association of professional social workers in the United States with over 130,000

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[3] Am. Psychiatric Ass'n, *Position Statement: Support of Legal Recognition of Same-Sex Civil Marriage* (2005).

[4] AAP, Policy Statement, *Promoting the Well-Being of Children Whose Parents are Gay or Lesbian*, 131 Pediatrics 827, 828 (2013).

[5] AAMFT, *Position on Couples and Families* (2005).

members in 55 chapters. NASW's Michigan Chapter has 5,800 members; the Ohio Chapter has 4,500 members; the Tennessee Chapter has 2,100 members; and, the Kentucky Chapter has 1,600 members. NASW develops policy statements on issues of importance to the social work profession. Consistent with those statements, NASW supports full legal acceptance of lesbian, gay, and bisexual people, including their right to marry.[6]

The American Psychoanalytic Association is the oldest and largest national psychoanalytic membership organization, with more than 3,500 members and associates. It believes that marriage is a basic human right and that same gender couples should be able to share equally in the rights and responsibilities of civil marriage.[7]

The American Academy of Family Physicians ("AAFP"), headquartered in Leawood, Kansas, is the national medical specialty society representing family physicians. Founded in 1947 as a not-for-profit corporation, its 115,900 members are physicians and medical students from all 50 states, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, and the Uniformed Services of the United States. The AAFP seeks to improve the health of patients, families, and communities by advocating for the health of the

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[6] NASW, *Policy Statement: Lesbian, Gay, and Bisexual Issues, in Social Work Speaks* 219, 221 (9th ed. 2012).

[7] Am. Psychoanalytic Ass'n, *Position Statement on Civil Marriage and Civil Rights* (2013).

public and serving the needs of members with professionalism and creativity.

The American Medical Association ("AMA") is the largest professional association of physicians, residents, and medical students in the United States, substantially all of whom are represented in the AMA's policy making process. The objectives of the AMA are to promote the science and art of medicine and the betterment of public health.

All parties have consented to the filing of this brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

As the Sixth Circuit recognized, "[g]ay couples, no less than straight couples, are capable of sharing [loving, committed] relationships. And gay couples, no less than straight couples, are capable of raising children and providing stable families for them." *DeBoer v. Snyder*, 772 F.3d 388, 405 (6th Cir. 2014). Nonetheless, some proponents of state laws that exclude same-sex couples from marriage argue that this exclusion reflects meaningful differences between same-sex and heterosexual relationships, or between the parenting abilities of same-sex and heterosexual couples. These claims stand in sharp contrast to what scientific research shows about same-sex couples and their families.

Scientific evidence strongly supports the conclusion that homosexuality is a normal expression of human sexuality; that gay men and lesbians form stable, committed relationships that are equivalent to

heterosexual relationships in essential respects; that same-sex couples are no less fit than heterosexual parents to raise children, and their children are no less psychologically healthy and well-adjusted; and that denying same-sex couples access to marriage is both an instance of institutional stigma and a contributor to the negative treatment of lesbian, gay, and bisexual people. In short, the claim that allowing same-sex couples to marry undermines the institution of marriage and harms children is inconsistent with the scientific evidence.

The body of research presented below contravenes the stereotype-based rationales that the Equal Protection Clause was designed to prohibit and that some opponents of same-sex marriage use to justify anti-same-sex marriage laws. The research also demonstrates that the Ohio, Tennessee, Michigan and Kentucky marriage laws unfairly stigmatize same-sex couples by discriminating between them and married heterosexual couples.

Because there is no scientific justification for excluding same-sex couples from marriage, *Amici* urge this Court to reverse the decision below.

ARGUMENT

I. The Scientific Evidence Presented in This Brief.

This brief presents an accurate summary of the current state of scientific and professional knowledge concerning sexual orientation and families relevant to this case. *Amici* have made a good faith effort to take

into account the findings of all valid, published studies in these areas.

Amici rely on the best empirical research available. Before citing a study, *Amici* have critically evaluated its methodology, including the reliability and validity of the measures and tests it employed, and the quality of its data-collection procedures and statistical analyses.

Scientific research is a cumulative process, and no empirical study is perfect in its design and execution. Accordingly, *Amici* base their conclusions as much as possible on findings that have been replicated across studies rather than on the findings of any single study.

Even well-executed studies may be limited in their implications and generalizability. Many studies cited herein discuss their own limitations and provide suggestions for further research. This is consistent with the scientific method and does not impeach these studies' overall conclusions.

Most of the empirical studies and literature reviews cited herein have been published in reputable, peer-reviewed academic journals. Some academic books, book chapters, and technical reports, which typically are not subject to the same peer-review standards as journal articles, are also cited, provided that they report research employing rigorous methods, are authored by established researchers, and accurately reflect professional consensus about the current state of knowledge.

II. Homosexuality Is A Normal Expression of Human Sexuality, Is Generally Not Chosen, and Is Highly Resistant to Change.

Sexual orientation refers to an enduring disposition to experience sexual, affectional, or romantic attractions to men, women, or both. It also encompasses an individual's sense of personal and social identity based on those attractions, behaviors expressing them, and membership in a community of others who share them.[8] Although sexual orientation ranges along a continuum from exclusively heterosexual to exclusively homosexual, it is usually discussed in terms of three categories: *heterosexual* (having sexual and romantic attraction primarily or exclusively to members of the other sex), *homosexual* (having sexual and romantic attraction primarily or exclusively to members of one's own sex), and *bisexual* (having a significant degree of sexual and romantic attraction to both sexes).

When the American Psychiatric Association published the first *Diagnostic and Statistical Manual of Mental Disorders* ("DSM") in 1952, homosexuality was listed as a mental disorder. However, this classification reflected social stigma rather than empirical research findings. Recognizing the lack of

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[8] *See* Nat'l Academy of Sciences' Institute of Medicine, *Report: The Health of Lesbian, Gay, Bisexual, and Transgender People* (2011); A.R. D'Augelli, *Sexual Orientation*, in 7 *Encyclopedia of Psychology* 260 (A.E. Kazdin ed., 2000); G.M. Herek, *Homosexuality*, in 2 *Corsini Encyclopedia of Psychology* 774-76 (I.B. Weiner & W.E. Craighead eds., 4th ed. 2010).

scientific evidence for this classification,[9] the American Psychiatric Association removed homosexuality from the DSM in 1973, stating that "homosexuality *per se* implies no impairment in judgment, stability, reliability, or general social or vocational capabilities."[10] In 1975, the APA adopted a policy reflecting the same conclusion.[11] For decades, the consensus of mainstream mental health professionals and researchers has been that homosexuality and bisexuality are normal expressions of human sexuality; that they pose no inherent obstacle to leading a happy, healthy, and productive life; and that gay and lesbian people function well in the full array of social institutions and interpersonal relationships.

Most gay men and lesbians do not experience their sexual orientation as a voluntary choice. In a U.S. national probability (i.e., "representative") sample of 662 self-identified lesbian, gay, and bisexual adults, only 5% of gay men and 16% of lesbians reported feeling they had "a fair amount" or "a great deal" of choice about their sexual orientation. Fully 88% of gay

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[9] *See, e.g.*, E. Hooker, *The Adjustment of the Male Overt Homosexual*, 21 J. Projective Techniques 17 (1957); B.F. Riess, *Psychological Tests in Homosexuality, in Homosexual Behavior* 296 (J. Marmor ed., 1980); C. Gonsiorek, *The Empirical Basis for the Demise of the Illness Model of Homosexuality, in Homosexuality* 115 (J.C. Gonsiorek & J.D. Weinrich eds., 1991).

[10] Am. Psychiatric Ass'n, *Position Statement: Homosexuality and Civil Rights* (1973), *in* 131 Am. J. Psychiatry 497 (1974).

[11] APA, *Minutes of the Annual Meeting of the Council of Representatives*, 30 Am. Psychologist 620, 633 (1975).

men and 68% of lesbians reported that they had "no choice at all."[12]

Although some groups and individuals have offered clinical interventions that purport to change sexual orientation from homosexual to heterosexual—sometimes called "conversion" therapies—these interventions have not been shown to be effective or safe. A review of the scientific literature by an APA task force concluded that sexual orientation change efforts are unlikely to succeed and can be harmful.[13]

Major national mental health organizations—including *Amici*—have adopted policy statements cautioning the profession and the public about treatments that purport to change sexual orientation.[14]

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[12] G.M. Herek et al., *Demographic, Psychological, and Social Characteristics of Self-Identified Lesbian, Gay, and Bisexual Adults in a U.S. Probability Sample*, 7 Sexuality Res. & Soc. Policy 176 (2010); *see also* G.M. Herek et al., *Internalized Stigma Among Sexual Minority Adults*, 56 J. Counseling Psychol. 32 (2009). Comparable data for heterosexuals' perceptions of their own sexual orientation are not available.

[13] APA, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* (2009); *see also* APA, *Resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts* (2009).

[14] *See* APA, *Resolution on Marriage Equality*, *supra* note 2; Am. Psychiatric Ass'n, *Position Statement: Psychiatric Treatment and Sexual Orientation* (1998); AAMFT, *Reparative/Conversion Therapy* (2009); AMA, Policy H-160.991, *Health Care Needs of the Homosexual Population* (AMA "opposes, the use of 'reparative' or 'conversion' therapy"); NASW, *Position Statement: "Reparative" and "Conversion" Therapies for Lesbians and Gay Men* (2000);

III. Sexual Orientation and Relationships.

Sexual orientation is commonly discussed as a characteristic of individuals, like biological sex or age. This perspective is incomplete because sexual orientation necessarily involves *relationships* with other people. Sexual acts and romantic attractions are categorized as homosexual or heterosexual according to the biological sex of the individuals involved, relative to each other. Indeed, it is only by acting with another person—or desiring to act—that individuals express their heterosexuality, homosexuality, or bisexuality. Thus, sexual orientation is integrally linked to the intimate personal relationships that human beings form with others to meet their deeply felt needs for love, attachment, and intimacy. It defines the universe of persons with whom one is likely to find the satisfying and fulfilling relationships that, for many individuals, comprise an essential component of personal identity.

Am. Psychoanalytic Ass'n, *Position Statement: Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression* (2012); AAP, *Policy Statement, Office-Based Care for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth*, 132 Pediatrics 198 (2013); AAP, Committee on Adolescence, *Homosexuality and Adolescence*, 92 Pediatrics 631 (1993); *see also* B.L. Frankowski, *Sexual Orientation and Adolescents*, 113 Pediatrics 1827 (2004).

A. Gay Men and Lesbians Form Stable, Committed Relationships That Are Equivalent to Heterosexual Relationships in Essential Respects.

Most gay men and lesbians want to form stable, long-lasting relationships.[15] Many of them do so. According to 2010 Census data, same-sex couples headed more than 600,000 households in the United States, and over 52,000 households in Ohio, Tennessee, Michigan and Kentucky.[16] Numerous studies using probability and nonprobability samples of gay men and lesbians have found that the vast majority of participants are in a committed relationship or have been at some point in their lives, and that many existing couples have been together 10 or more years.[17]

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[15] For example, in a 2013 national probability sample of lesbian, gay, and bisexual adults, 60% were married or said they would like to get married. Pew Research Center, *Survey of LGBT Americans* (2013). In an earlier national survey, 78% of gay men and 87% of lesbians who were currently in a relationship said they would marry their partner if it were legal. Herek et al., *Demographic*, *supra* note 12.

[16] 2010 Census and 2010 American Community Survey, Supplemental Table: Same-Sex Unmarried Partner or Spouse Households by Sex of Householder by Presence of Own Children; *see also* G.J. Gates, *LGBT Parenting in the United States*, The Williams Institute, at 2 (2013).

[17] *See* Herek et al., *Demographic*, *supra* note 12; Pew Research Center, *supra* note 15; L.A. Peplau & A.W. Fingerhut, *Same-Sex Romantic Relationships, in Handbook of Psychology and Sexual Orientation* 165-178 (C.J. Patterson & A.R. D'Augelli eds., 2013); L.A. Peplau & A.W. Fingerhut, *The Close Relationships of Lesbians and Gay Men*, 58 Ann. Rev. Psychol. 405 (2007); L.A.

Empirical research demonstrates that the psychological and social dimensions of committed relationships between same-sex partners largely resemble those of heterosexual partnerships. Same-sex couples form deep emotional attachments and commitments, with levels of relationship satisfaction similar to or higher than those of heterosexual couples.[18] They also go through similar processes to address concerns about intimacy, love, equity, and other relationship issues.[19]

Peplau & N. Ghavami, *Gay, Lesbian, and Bisexual Relationships, in Encyclopedia of Human Relationships* (H.T. Reis & S. Sprecher eds., 2009).

[18] K.F. Balsam et al., *Three-Year Follow-Up of Same-Sex Couples Who Had Civil Unions in Vermont, Same-Sex Couples Not in Civil Unions, and Heterosexual Married Couples*, 44 Developmental Psychol. 102 (2008); L.A. Kurdek, *Change in Relationship Quality for Partners from Lesbian, Gay Male, and Heterosexual Couples*, 22 J. Fam. Psychol. 701 (2008); L.A. Peplau & K.P. Beals, *The Family Lives of Lesbians and Gay Men, in Handbook of Family Communication* 233, 236 (A.L. Vangelisti ed., 2004).

[19] Kurdek, *Change in Relationship Quality*, *supra* note 18; L.A. Kurdek, *Are Gay and Lesbian Cohabiting Couples Really Different from Heterosexual Married Couples?*, 66 J. Marriage & Fam. 880 (2004); G.I. Roisman et al., *Adult Romantic Relationships as Contexts for Human Development*, 44 Developmental Psychol. 91 (2008); *see generally* L.A. Kurdek, *What Do We Know About Gay and Lesbian Couples?*, 14 Current Directions in Psychol. Sci. 251 (2005); Peplau & Fingerhut (2007), *supra* note 17; Peplau & Ghavami, *supra* note 17.

B. The Institution of Marriage Offers Social, Psychological, and Health Benefits That Are Denied to Same-Sex Couples Who Cannot Legally Marry.

Marriage has a profound effect on the lives of married individuals. Sociologists have observed that marriage creates order in peoples' lives[20] and "provides a strong positive sense of identity, self-worth, and mastery."[21] Empirical research demonstrates that marriage has distinct benefits that extend beyond the material necessities of life.[22] These intangible benefits have important implications for the physical and psychological health of married individuals and for the relationship itself.

Because marriage rights have been granted to same-sex couples only recently, little empirical research has been published that compares married same-sex couples to unmarried same-sex couples. Based on their scientific and clinical expertise, *Amici* believe it is appropriate to extrapolate from the

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[20] P. Berger & H. Kellner, *Marriage and the Construction of Reality*, 46 Diogenes 1 (1964).

[21] W.R. Gove et al., *The Effect of Marriage on the Well-Being of Adults*, 11 J. Fam. Issues 4, 16 (1990); *see also* E. Durkheim, *Suicide* 259 (J.A. Spaulding & G. Simpson trans., 1951) (1897).

[22] *See* S. Stack & J.R. Eshleman, *Marital Status and Happiness*, 60 J. Marriage & Fam. 527 (1998); R.P.D. Burton, *Global Integrative Meaning as a Mediating Factor In the Relationship Between Social Roles and Psychological Distress*, 39 J. Health & Soc. Behav. 201 (1998); S.L. Nock, *A Comparison of Marriages and Cohabiting Relationships*, 16 J. Fam. Issues 53, 53 (1995); Gove (1990), *supra* note 21, at 5.

empirical research literature for heterosexual couples—with qualifications as necessary—to anticipate the likely effects of marriage for same-sex couples.[23]

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[23] The available empirical research supports such extrapolation. For example, a study using data from the California Health Interview Survey found that gay, lesbian, and bisexual adults who were married or in a registered domestic partnership (RDP) with a same-sex partner had significantly less psychological distress than their counterparts who were not in a legally recognized same-sex relationship. R.G. Wight et al., *Same-Sex Legal Marriage and Psychological Well-Being*, 103 Am. J. Pub. Health 339-46 (2013). Supplemental analyses showed that marriage was significantly associated with psychological well-being among same-sex couples but domestic partnership was not. Thus, the authors concluded, "there might be a unique positive mental health association specifically conferred by legal marriage, particularly compared with not being in any type of legally recognized relationship at all." *Id.* at 343. Another recent study found that, among lesbian, gay and bisexual adults ages fifty and older, those in same-sex partnerships reported significantly better health and fewer depressive symptoms than those who were single. M.E. Williams & K.I. Fredriksen-Goldsen, *Same-Sex Partnerships & The Health of Older Adults*, 42 J. Cmty. Psych. 558 (2014).

Amici also note that comparisons between married and unmarried heterosexual couples are complicated by the possibility that observed differences might be due to self-selection (i.e., people who choose to marry may differ *a priori* from those who do not). Researchers have concluded, however, that benefits associated with marriage result largely from the institution itself rather than self-selection. *See, e.g.*, Gove (1990), *supra* note 21, at 10; J.E. Murray, *Marital Protection and Marital Selection*, 37 Demography 511 (2000). It is reasonable to expect that same-sex couples who choose to marry will, like their heterosexual counterparts, benefit from the institution of marriage itself.

This research shows that married heterosexual men and women generally experience better physical and mental health than their unmarried counterparts.[24] These health benefits do not appear to result simply from being in an intimate relationship; most studies have found that married heterosexual individuals generally manifest greater well-being than members of comparable cohabiting couples.[25] Of course, marital status alone does not guarantee better health or greater happiness. Unhappily married people often have lower levels of well-being than the unmarried, and marital discord and dissatisfaction are often associated with negative health effects.[26] Nevertheless, satisfied

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[24] *See* N.J. Johnson et al., *Marital Status and Mortality*, 10 Annals Epidemiology 224 (2000); C.E. Ross et al., *The Impact of the Family on Health*, 52 J. Marriage & Fam. 1059 (1990); R.W. Simon, *Revisiting the Relationships Among Gender, Marital Status, and Mental Health*, 107 Am. J. Soc. 1065 (2002). A recent study based on survey data of lesbian, gay and bisexual adults ages fifty and older reached a similar conclusion: Respondents in same-sex partnerships reported significantly better health and fewer depressive symptoms than those who were single. *See* Williams & Fredriksen-Goldsen, *supra* note 23.

[25] *See* Gove (1990), *supra* note 21; S.L. Brown, *The Effect of Union Type on Psychological Well-Being*, 41 J. Health & Soc. Behav. 241 (2000). *But see* C.E. Ross, *Reconceptualizing Marital Status as a Continuum of Social Attachment*, 57 J. Marriage & Fam. 129 (1995) (failing to detect significant differences in depression between married and comparable cohabiting heterosexual couples).

[26] *See* W.R. Gove et al., *Does Marriage Have Positive Effects on the Psychological Well-Being of the Individual?*, 24 J. Health & Soc. Behav. 122 (1983); K. Williams, *Has the Future of Marriage Arrived?*, 44 J. Health Soc. Behav. 470 (2003); J.K. Kiecolt-Glaser

married couples consistently manifest higher levels of happiness, psychological well-being, and physical health than the unmarried.

Being married is also a source of stability and commitment. Marital commitment is a function not only of rewarding features of the relationship, but also of constraints on dissolving the relationship (e.g., feelings of family obligation; moral and religious values; legal restrictions; financial concerns; and anticipated disapproval of others).[27] The existence of such barriers alone is not sufficient to sustain a marriage in the long term, and perceiving one's intimate relationship primarily in terms of rewards, rather than barriers to dissolution, is likely to be associated with greater relationship satisfaction.[28] Nonetheless, perceived barriers are negatively correlated with divorce; thus, their presence may increase partners' motivation to seek solutions for problems rather than dissolving the relationship.[29]

& T.L. Newton, *Marriage and Health*, 127 Psychol. Bull. 472 (2001).

[27] *See* G. Levinger, *Marital Cohesiveness and Dissolution*, 27 J. Marriage & Fam. 19 (1965); J.M. Adams & W.H. Jones, *The Conceptualization of Marital Commitment*, 72 J. Personality & Soc. Psychol. 1177 (1997).

[28] *See, e.g.*, D. Previti & P.R. Amato, *Why Stay Married?*, 65 J. Marriage & Fam. 561 (2003).

[29] *See* T.B. Heaton & S.L. Albrecht, *Stable Unhappy Marriages*, 53 J. Marriage & Fam. 747 (1991); L.K. White & A. Booth, *Divorce Over the Life Course*, 12 J. Fam. Issues 5 (1991).

For same-sex couples lacking access to legal marriage, the primary motivation to remain together derives from the rewards associated with the relationship rather than formal barriers to separation.[30] Given this fact, and the legal and prejudicial obstacles that same-sex partners face, the prevalence and durability of same-sex relationships are striking.[31]

IV. The Children of Same-Sex Couples.

A. Many Same-Sex Couples Raise Children.

Over 111,000 households in the United States are headed by same-sex partners with children under age 18; approximately 9,400 of these households are in Ohio, Tennessee, Michigan and Kentucky.[32] These figures are widely assumed to underestimate the actual number of same-sex couples who are raising children.[33]

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[30] L.A. Kurdek, *Relationship Outcomes and Their Predictors*, 60 J. Marriage & Fam. 553 (1998).

[31] Some evidence is available to suggest that access to marriage will strengthen these relationships. One study compared same-sex and different-sex couples in a national probability sample first recruited in 2009. Break-up rates were not significantly different between heterosexual and same-sex couples in marriages or marriage-like partnerships. M.J. Rosenfeld, *Couple Longevity in the Era of Same-Sex Marriage in the United States*, 76 J. Marriage & Family 905 (2014).

[32] 2010 Census Survey, *supra* note 16.

[33] This is because the Census does not directly assess participants' sexual orientation; it reflects only households headed by cohabiting same-sex partners who voluntarily reported their relationship status. Other studies indicate that a substantial portion of lesbian, gay, and bisexual adults have had one or more children. *See, e.g.*,

B. The Factors That Affect the Adjustment of Children Are Not Dependent on Parental Gender or Sexual Orientation.

Hundreds of studies over the past 30 years have elucidated the factors that are associated with healthy adjustment among children and adolescents—i.e., the influences that allow children and adolescents to function well in their daily lives. As one noted authority in developmental psychology explained, based on the accumulated empirical evidence, "the same factors explain child adjustment regardless of family structure," and parents' sexual orientation and the biological relatedness between parents and children "are of little or no predictive importance" when researchers control for other variables.[34]

Pew Research Center, *supra* note 15 (based on data from 2008 and 2010 General Social Surveys, finding that more than one-third (37%) of gay, lesbian, and bisexual adults have had a child); Herek et al., *Demographic*, *supra* note 12 (based on national probability sample of lesbian, gay, and bisexual adults, finding that approximately 34% reported having one or more biological, adopted or step children). Analyses of 2012 American Community Survey data also indicate that same-sex couples are approximately 4.5 times more likely than opposite-sex couples to be rearing adopted children. A.E. Goldberg et al., *Research Report on LGB-Parent Families*, The Williams Institute (2014).

[34] M.E. Lamb, *Mothers, Fathers, Families, and Circumstances*, 16 Applied Developmental Sci. 98-111 (2012); *see also* S. Golombok, *Parenting* (2002); M.E. Lamb & C. Lewis, *The Role of Parent-Child Relationships in Child Development, in Developmental Science* 429-68 (M.H. Bornstein & M.E. Lamb eds., 5th ed. 2005); C.J. Patterson et al., *Socialization in the Context of Family*

(1) The qualities of parent-child relationships

Research shows that children's adjustment is affected by the quality of a parent-child relationship—including attributes like parental warmth, consistency, and stability. Children whose parents provide them with loving guidance in the context of secure home environments are likely to show more positive adjustment, regardless of their parents' sexual orientation.[35]

(2) The qualities of relationships between significant adults in children's lives

Additionally, children are more likely to show positive adjustment when parental relationships are characterized by love, warmth, cooperation, security, and mutual support. In contrast, when parental relationships are conflict-ridden and acrimonious, adjustment tends to be less favorable. Family instability, household disruption, and parental divorce are often associated with poorer adjustment and problems that can last into adulthood.[36] These patterns

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Diversity, in Handbook of Socialization 328-51 (J.E. Grusec & P.D. Hastings eds., 2d ed. 2015).

[35] Lamb & Lewis, *supra* note 34; Patterson et al., *supra* note 34; J.Z. Smith et al., *Multilevel Modeling Approaches to the Study of LGBT Parent-Families, in LGBT-Parent Families* 307-323 (A.E. Goldberg & K.A. Allen eds., 2013) (qualities such as parental warmth, parents' intimate relationship quality, and parental well-being matter more to children's adjustment than sexual orientation).

[36] *See, e.g.*, P.R. Amato, *Children of Divorce in the 1990s*, 15 J. Fam. Psychol. 355 (2001).

are observed, regardless of whether children are reared by same-sex couples or heterosexual couples.[37] Consequently, researchers must take care to avoid conflating the negative consequences of experiencing divorce or household instability with the consequences of simply having a gay or lesbian parent.[38]

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[37] *The Family Context of Parenting in Children's Adaptation to Elementary School* (P.A. Cowan et al. eds., 2005); R.W. Chan et al., *Psychosocial Adjustment Among Children Conceived Via Donor Insemination By Lesbian and Heterosexual Mothers*, 69 Child Dev. 443 (1998); E.M. Cummings et al., *Children's Responses to Everyday Marital Conflict Tactics in the Home*, 74 Child Dev. 1918 (2003); E.M. Cummings et al., *Everyday Marital Conflict and Child Aggression*, 32 J. Abnormal Child Psychol. 191 (2004); Golombok (2002), *supra* note 34; D. Potter, *Same-Sex Parent Families and Children's Academic Achievement*, 74 J. Marriage & Fam. 556 (2012); M.J. Rosenfeld, *Nontraditional Families & Childhood Progress Through School*, 47 Demography, 755 (2010).

Although research conducted with children reared by heterosexual parents indicates that they fare better with two parenting figures than with one, *see, e.g.*, S. McLanahan & G. Sandefur, *Growing Up With a Single Parent* 39 (1994), comparable studies of children reared by same-sex couples versus those raised by a single lesbian, gay, or bisexual parents have not appeared in the research literature.

[38] Several studies that purport to identify differences in the adjustment of children of heterosexual versus same-sex couples exhibit this flaw. *See* G.M. Herek, *Evaluating the Methodology of Social Science Research on Sexual Orientation and Parenting: A Tale of Three Studies*, 48 U.C. Davis L. Rev. 583 (2014) (finding that this and other serious methodological flaws undermine the validity of studies by Sarantakos, Regnerus, and Allen, which are frequently cited by opponents of same-sex marriage); note 48 *infra* (discussing failure to adequately account for the effects of past family instability, and other flaws, in recently published papers by D.P. Sullins).

(3) The availability of economic and other resources

Children with sufficient economic support are likely to live in safer neighborhoods, breathe cleaner air, and eat more nutritious food. They are also more likely to have opportunities to participate in positive after-school activities, and have social and emotional resources from teammates, coaches, youth leaders, and others. To the extent that children have access to these resources, they are more likely to show positive adjustment, regardless of their parents' sexual orientation.[39]

In short, the same factors are linked to children's positive development, regardless of whether they are raised by heterosexual, lesbian, or gay parents. Moreover, when their parents can legally marry, children benefit in terms of all three factors. Marriage facilitates positive parent-child relationships by providing children with a legal relationship to both parents. This legal relationship can provide needed security and continuity, especially during times of crisis (such as school emergencies, medical emergencies, or the incapacity or death of a parent). In addition, children benefit when their parents are financially secure, physically and psychologically healthy, and not subjected to high levels of stress. To the extent that marriage facilitates same-sex couples' well-being,

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[39] *Neighborhood Poverty* (J. Brooks-Gunn et al. eds., 1997); *Consequences of Growing Up Poor* (G.J. Duncan & J. Brooks-Gunn eds., 1997); Patterson et al., *supra* note 34; Potter, *supra* note 37; Rosenfeld (2010), *supra* note 37.

strengthens their relationships with each other, and reduces the risk of household instability, it enhances their children's well-being as well.[40] Thus, *Amici* conclude that permitting same-sex couples to marry is likely to have positive effects on the children they raise.

C. There Is No Scientific Basis for Concluding That Same-Sex Couples Are Any Less Fit or Capable Parents Than Heterosexual Couples, or That Their Children Are Any Less Psychologically Healthy and Well Adjusted.

Assertions that heterosexual couples are better parents than same-sex couples, or that the children of lesbian or gay parents fare worse than children of heterosexual parents, are not supported by the cumulative scientific evidence.[41] Rather, the vast

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[40] Chan et al., *supra* note 37; C.J. Patterson, *Families of the Lesbian Baby Boom*, 4 J. Gay & Lesbian Psychotherapy 91 (2001).

[41] The research on gay, lesbian, and bisexual parents includes dozens of empirical studies. Their findings are summarized in reviews of empirical literature published in respected, peer-reviewed journals and academic books. Recent reviews include Patterson et al., *supra* note 34; A.E. Goldberg, *Lesbian and Gay Parents and Their Children* (2010); C.J. Patterson, *Family Lives of Lesbian and Gay Adults, in The Handbook of Marriage and Family* 659, 668-71 (G.W. Peterson & K.R. Bush eds., 2013); C.J. Patterson, *Children of Lesbian and Gay Parents*, 64 Am. Psychologist 727 (2009). For earlier reviews and related research, *see, e.g.*, E.C. Perrin et al., *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 Pediatrics 341 (2002); C.J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 J. Marriage & Fam. 1052 (2000); N. Anderssen et al., *Outcomes for Children with Lesbian or Gay Parents*, 43 Scand. J. Psychol.

majority of scientific studies that have directly compared these groups have found that gay and lesbian parents are as fit and capable as heterosexual parents, and that their children are as psychologically healthy and well adjusted. More research has focused on lesbian mothers than on gay fathers,[42] but published studies of gay fathers find that they are as fit and able parents as heterosexual fathers.[43]

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335 (2002); C.J. Patterson, *Lesbian and Gay Parents and Their Children, in Contemporary Perspectives on Lesbian, Gay, and Bisexual Identities*, Nebraska Symposium on Motivation 141 (D.A. Hope ed., 2009); C.J. Telingator & C.J. Patterson, *Children and Adolescents of Lesbian and Gay Parents*, 47 J. Am. Acad. of Child & Adolescent Psychiatry 1364 (2008); J.L. Wainright et al., *Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents With Same-Sex Parents*, 75 Child Dev. 1886 (2009). *See also* Nat'l Academy of Sciences' Institute of Medicine, *supra* note 8 (concluding that "studies show that [the children of lesbian and gay parents] are well adjusted and developmentally similar to the children of different-sex parents").

[42] *See, e.g.*, H. Bos & T.G.M. Sandfort, *Children's Gender Identity in Lesbian and Heterosexual Two-Parent Families*, 62 Sex Roles 114 (2010); H. Bos et al., *Lesbian & Heterosexual Two-Parent Families*, J. Child. & Fam. Stud. (2014); R.H. Farr et al., *Parenting and Child Development in Adoptive Families*, 14 Applied Developmental Sci. 164, 176 (2010); S. Golombok et al., *Children with Lesbian Parents*, 39 Developmental Psychol. 20 (2003); I. Rivers et al., *Victimization, Social Support, and Psychosocial Functioning Among Children of Same-Sex and Opposite-Sex Couples in the United Kingdom*, 44 Developmental Psychol. 127 (2008); J.L. Wainright & C.J. Patterson, *Delinquency, Victimization, and Substance Use Among Adolescents with Female Same-Sex Parents*, 20 J. Fam. Psychol. 526 (2006).

[43] Farr, *supra* note 42, at 176; *see also* A.E. Goldberg & J.Z. Smith, *Predictors of Psychological Adjustment in Early Placed Adopted*

Early research in this area employed nonprobability samples (whose representativeness cannot be determined). But more recent studies have used national probability samples. One such study used data from the National Longitudinal Study of Adolescent Health to compare adolescents parented by female couples with adolescents parented by heterosexual couples. The researchers found no differences between the two groups on measures of a large number of key variables, including psychosocial adjustment, school outcomes, substance use, delinquency, victimization experiences, and relationships with peers.[44]

Another study used data from the Early Childhood Longitudinal Study – Kindergarten Cohort (ECLS-K) to compare the academic achievement of children growing up in various family structures. When the effects of significant family transitions (e.g.,

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Children with Lesbian, Gay, and Heterosexual Parents, 27 J. Family Psych. 431 (2013); J.A. Lavner et al., *Can Gay and Lesbian Parents Promote Healthy Development in High-Risk Children Adopted From Foster Care?*, 82 Am. J. Orthopsychiatry 465-472 (2012); S. Erich et al., *Gay and Lesbian Adoptive Families*, 9 J. Fam. Soc. Work 17 (2005); S. Erich et al., *A Comparative Analysis of Adoptive Family Functioning with Gay, Lesbian, and Heterosexual Parents and Their Children*, 1 J. GLBT Fam. Stud. 43 (2005). For a review of earlier research, *see* C.J. Patterson, *Gay Fathers, in The Role of the Father in Child Development* 397, 413 (M.E. Lamb ed., 2004).

[44] J.L. Wainright & C.J. Patterson, *Peer Relations Among Adolescents with Female Same-Sex Parents*, 44 Developmental Psychol. 117 (2008); Wainright & Patterson (2006), *supra* note 42; Wainright et al., *supra* note 41.

parental divorce, separation, or death) were taken into account, children in same-sex family structures showed slightly higher achievement levels than children living with their biological mother and father, although this difference was not statistically significant.[45]

Two other studies, each using the same data source, demonstrate the pitfalls of conflating parent sexual orientation with other variables relevant to children's development. Both used U.S. Census data to compare educational outcomes among children residing in homes with various family structures. One reported that children in households with same-sex cohabiting couples had significantly lower levels of school progress than children of married heterosexual couples.[46] The

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[45] Potter, *supra* note 37; *see also* A.L. Fedewa & T.P. Clark, *Parent Practices and Home-School Partnerships*, 5 J. GLBT Fam. Stud. 312-339 (2009) (using an ECLS-K subsample and finding children of same-sex couples did not differ significantly from children of heterosexual couples in academic achievement or social adjustment). In the ECLS-K, parental sexual orientation and relationship status were inferred from a series of questions about the household composition and caretakers.

[46] D.W. Allen et al., *Nontraditional Families and Childhood Progress Through School*, 50 Demography 955-961 (2013). Another recent paper by the same author compared across family structures high school graduation rates among young adults (age 17-22) in Canada still residing with their parents. D.W. Allen, *High School Graduation Rates Among Children of Same-Sex Households*, 11 Rev. Econ. of the Household 635-658 (2013). This study is irrelevant to questions about parenting because, as the author acknowledged: "this paper does not study the effect of growing up in a same-sex household." *Id.* (emphasis added). Instead, the paper draws conclusions based "a snap shot of the [studied] population" at a given moment. *Id.* (measuring performance of "children who lived with same-sex parents in

other study, however, concluded that the observed differences were due to parents' socioeconomic status and differences across family types in children's experiences with household disruptions and instability. When these factors were taken into consideration, school progress did not significantly differ between children of married heterosexual couples and children of same-sex cohabiting couples.[47]

Amici emphasize that the parenting abilities of gay men and lesbians—and the positive outcomes for their children—are *not* areas where credible scientific researchers disagree.[48] Thus, after careful scrutiny of

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2006," but lacking data concerning the earlier family history of the children and their parents' prior marital history). In addition, the sample excluded young adults who no longer resided with their parents, thus precluding a meaningful estimate of actual graduation rates in this population. Moreover, the paper's own analyses show that differences between the young adults currently residing with gay or lesbian parents versus those residing with married heterosexual parents were no longer statistically significant when the analyses included additional information, such as parents' current marital status and household instability during the previous five years. *Id.* (Model 3, Table 8 of the Appendix). *See* Herek (2014), *supra* note 38 (discussing Allen's study).

[47] Rosenfeld (2010), *supra* note 37.

[48] The handful of sources that suggest that same-sex parenting may have negative effects on children suffer from serious methodological flaws and do not reflect the current state of scientific knowledge. *See, e.g.*, *supra* notes 38, 46. Specifically, the conclusions of three researchers frequently cited by opponents of same-sex marriage – Sarantakos, Regnerus and Allen – have been resoundingly rejected by the mainstream scientific community. *See, e.g.*, Herek (2014), *supra* note 38 (finding that methodological flaws in Sarantakos, Regnerus and Allen studies make their work "irrelevant to empirically-based discussions of parenting and

sexual orientation"); G.J. Gates et al., *Letter to the editors and advisory editors of* Social Science Research, 41 Soc. Sci. Res. 1350, 1351 (2012) (letter signed by 200 scientists, clinicians, and academics to editorial board of journal in which Regnerus study was published, commenting on the study's scientific deficiencies); D.E. Sherkat, *The Editorial Process and Politicized Scholarship: Monday Morning Editorial Quarterbacking and a Call for Scientific Vigilance*, 41 Soc. Sci. Res. 1346 (2012) (independent auditor appointed by the journal that published Regnerus's article described it as "a non-scientific study" and concluded it should not have been published); M.J. Rosenfeld, *Reply to Allen et al.*, Demography 1-7 (2012) (concluding that Allen's finding of worse school performance was attributable to methodological errors, including failing to control for divorce and other factors).

Recently published papers by Donald Paul Sullins – all reporting secondary analyses of data from the National Health Interview Survey (NHIS) – have similar methodological flaws. *See* D.P. Sullins, *Bias in Recruited Sample Research on Children with Same-Sex Parents Using the Strengths and Difficulties Questionnaire (SDQ)*, 5 J. Sci. Research & Reports 375 (2015); D.P. Sullins, *Child Attention-Deficit Hyperactivity Disorder (ADHD) in Same-Sex Parent Families in the United States: Prevalence and Comorbidities*, 6 British J. Med. & Medical Research 987 (2015); D.P. Sullins, *Emotional problems among children with same-sex parents: Difference by definition*, 7 British J. Ed., Soc'y & Behavioural Sci. 99 (2015). For instance, Sullins fails to adequately take into account children's histories of family disruption; he combines all children residing with same-sex couples into a single heterogeneous category, while creating more differentiated categories of children of opposite-sex couples (children residing with married versus single or divorced parents); he fails to acknowledge known coding errors in the NHIS data set, which resulted in the misclassification of many heterosexual partners as same-sex couples; and – in one paper – he attempts to correlate a largely heritable condition (ADHD) with variables related to children's upbringing. In addition to these problems, none of the journals in which Sullins' papers were published are indexed in major, reputable social science databases. The peer

decades of research, the APA concluded in 2004 that (a) "there is no scientific evidence that parenting effectiveness is related to parental sexual orientation: Lesbian and gay parents are as likely as heterosexual parents to provide supportive and healthy environments for their children" and (b) "research has shown that the adjustment, development, and psychological well-being of children are unrelated to parental sexual orientation and that the children of lesbian and gay parents are as likely as those of heterosexual parents to flourish."[49] The APA has continued to monitor the state of the scientific research and confirmed that this conclusion continues to be accurate.

Similarly, the AAP has concluded that "[t]here is extensive research documenting that there is no causal relationship between parents' sexual orientation and children's emotional, psychosocial, and behavioral development. Many studies attest to the normal development of children of same-gender couples when the child is wanted, the parents have a commitment to shared parenting, and the parents have strong social and economic supports."[50]

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review process used by these journals appears to have been perfunctory and conducted by reviewers without relevant expertise or any familiarity with the NHIS. Even a cursory examination of the reviews, which are posted on each journal's web site, reveals that they raised few substantive concerns at all.

[49] APA, *Resolution on Sexual Orientation, Parents, and Children* (2004).

[50] AAP, *supra* note 4.

The NASW has similarly determined that "[t]he most striking feature of the research on lesbian mothers, gay fathers, and their children is the absence of pathological findings. The second most striking feature is how similar the groups of gay and lesbian parents and their children are to heterosexual parents and their children that were included in the studies."[51]

The American Psychoanalytic Association has likewise determined that "[t]here is no credible evidence that shows that a parent's sexual orientation or gender identity will adversely affect the development of the child."[52]

In adopting an official Position Statement in support of legal recognition of civil marriage for same-sex couples, the American Psychiatric Association observed that "no research has shown that the children raised by lesbians and gay men are less well adjusted than those reared within heterosexual relationships."[53]

Finally, the AMA likewise has adopted a policy supporting legislative and other reforms to allow adoption by same sex partners.[54] It has further recognized that "denying civil marriage based on sexual orientation is discriminatory and imposes harmful stigma on gay and lesbian individuals and couples and their families," and that "exclusion from civil marriage

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[51] NASW, *Policy Statement*, *supra* note 6.

[52] Am. Psychoanalytic Ass'n, *Position Statement: Parenting* (2012).

[53] Am. Psychiatric Ass'n, *Position Statement* (2005), *supra* note 3.

[54] *See* AMA, Policy H-60.940, *Partner Co-Adoption.*

contributes to health care disparities affecting same-sex households."[55]

V. Denying the Status of Marriage to Same-Sex Couples Stigmatizes Them.

The foregoing shows that the arguments about gay men and lesbians advanced in support of state laws that exclude same-sex couples from marriage and refuse to recognize same-sex marriages lawfully performed in other states are contradicted by the scientific evidence and reflect an unreasoned antipathy towards an identifiable minority. In depriving gay men and lesbians of membership in an important social institution, these laws convey the States' judgments that committed intimate relationships between people of the same sex are inferior to heterosexual relationships. This is the essence of stigma.

A stigmatized condition or status is one that is negatively valued by society, fundamentally defines a person's social identity, and disadvantages those who have it.[56] Stigma has been characterized as "an undesired differentness."[57] It is manifested in social

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[55] AMA, Policy H-65.973, *Health Care Disparities in Same-Sex Partner Households.*

[56] *See* E. Goffman, *Stigma* (1963); B.G. Link & J.C. Phelan, *Conceptualizing Stigma*, 27 Ann. Rev. Soc. 363 (2001); J. Crocker et al., *Social Stigma*, *in* 2 *The Handbook of Social Psychology* 504 (D.T. Gilbert et al. eds., 4th ed. 1998); AMA, Policy H-65.973, *supra* note 55 (recognizing that "exclusion from civil marriage contributes to health care disparities affecting same-sex households").

[57] Goffman, *supra* note 56, at 5.

institutions, including the law, and in individual behaviors. Laws that accord majority and minority groups differing status highlight the perceived "differentness" of the minority and thereby tend to legitimize prejudicial attitudes and individual acts against the disfavored group, including ostracism, harassment, discrimination, and violence. Large numbers of lesbian, gay, and bisexual people experience such acts of prejudice.[58]

Ohio, Tennessee, Michigan and Kentucky's laws banning same-sex marriage and refusing to recognize out-of-state same-sex marriages are instances of institutional stigma. The "avowed purpose and practical effect" of these laws is "to impose a disadvantage, a separate status, and so a stigma" on same-sex couples. *United States v. Windsor*, 133 S. Ct. 2675, 2693 (2013). They convey the States' judgments

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[58] A survey using a nationally representative sample of gay, lesbian, and bisexual adults found that 21% had been the target of a physical assault or property crime since age 18 because of their sexual orientation; 18% of gay men and 16% of lesbians reported they had experienced discrimination in housing or employment. G.M. Herek, *Hate Crimes and Stigma-Related Experiences Among Sexual Minority Adults in the United States*, 24 J. Interpersonal Violence 54 (2009). In another survey with a nationally representative sample, 30% of lesbian, gay, bisexual, and transgender respondents said they had been threatened or physically attacked because of their sexual orientation or gender identity; 26% of gay men and 23% of lesbians said they had been treated unfairly by an employer because of their sexual orientation. Pew Research Center, *supra* note 15; *see also* G.M. Herek et al., *Psychological Sequelae of Hate-Crime Victimization Among Lesbian, Gay, and Bisexual Adults*, 67 J. Consulting & Clinical Psychol. 945, 948 (1999).

that, in the realm of intimate relationships, legally united same-sex couples are inherently less deserving of society's full recognition than heterosexual couples. By devaluing and delegitimizing the relationships that constitute the very core of homosexual orientation, these laws compound and perpetuate the stigma historically attached to homosexuality.

CONCLUSION

The judgment below should be reversed.

Respectfully submitted,

Nathalie F.P. Gilfoyle
AMERICAN PSYCHOLOGICAL ASSOCIATION
750 First Street NE
Washington, DC 20002
(202) 336-6186

Counsel for American Psychological Association

Aaron M. Panner
KELLOGG HUBER HANSEN TODD EVANS & FIGEL, PLLC
1615 M Street NW
Suite 400
Washington, DC 20036
(202) 326-7900

Counsel for American Psychiatric Association

PAUL M. SMITH
Counsel of Record
JENNER & BLOCK LLP
1099 New York Ave. NW,
Ste. 900
Washington, DC 20001
(202) 639-6000
PSmith@jenner.com

Counsel for Amici Curiae